

DISTRICT OF NEVADA

Case No.: 2:15-cv-001798-JAD-EJY

Premier One Holdings, Inc.,

Plaintiff

V.

MTC Financial, Inc., et al.,

Defendants

Order Dismissing Claims against MTC Financial, Inc. under FRCP 4(m) and Closing Case

On June 12, 2019, the Court notified plaintiff that its claims against MTC Financial, Inc. would be dismissed under Federal Rule of Civil Procedure 4(m) for failure to serve this defendant if prompt action were not taken. That notice advised, “this action may be dismissed without prejudice as to [MTC Financial, Inc.] unless proof of service is filed with the clerk by 07/12/2019. Service on the party must have taken place prior to the expiration of the time limit set forth in Fed. R. Civ. P. 4(m), or good cause must be shown as to why such service was not made in that period. Failure to comply with this notice may result in dismissal of the action without prejudice as to said parties.”¹ That deadline passed without notice of service.

FRCP 4(m) requires service of the summons and complaint to be completed within 90 days of the complaint’s filing, and “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a

¹ ECF No. 29.

1 specified time.”² Rule 4(c)(1) further makes it clear that “[t]he plaintiff is responsible for having
2 the summons and complaint served within the time allowed under Rule 4(m).”³

3 District courts have the inherent power to control their dockets and “[i]n the exercise of
4 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.⁴ A
5 court may dismiss an action based on a party’s failure to prosecute an action, failure to obey a
6 court order, or failure to comply with local rules.⁵ In determining whether to dismiss an action
7 on one of these grounds, the court must consider: (1) the public’s interest in expeditious
8 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
9 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
10 availability of less drastic alternatives.⁶

11 The first two factors, the public’s interest in expeditiously resolving this litigation and the
12 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The
13 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
14 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
15 ordered by the court or prosecuting an action.⁷ A court’s warning to a party that its failure to

16 ² Fed. R. Civ. Proc. 4(m).

17 ³ Fed. R. Civ. Proc. 4(c).

18 ⁴ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

19 ⁵ See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with
20 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to
21 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–
22 41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to
keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

23 ⁶ *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130;
Ferdik, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

1 obey the court's order will result in dismissal satisfies the fifth factor's "consideration of
2 alternatives" requirement.⁸ And that warning was given here.⁹ The fourth factor—the public
3 policy favoring disposition of cases on their merits—is greatly outweighed by the factors
4 favoring dismissal.

5 Because plaintiff has not demonstrated that process has been served on MTC Financial,
6 Inc. within the time prescribed by FRCP 4(m), **IT IS THEREFORE ORDERED that the**
7 **claims against MTC Financial, Inc. are DISMISSED without prejudice** under FRCP 4(m).
8 Because the dismissal of these claims against MTC Financial, Inc. leaves no claims pending
9 against any party, IT IS FURTHER ORDERED that **the Clerk of Court is directed to CLOSE**
10 **THIS CASE.**

11 Dated: March 11, 2020

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14 U.S. District Judge Jennifer A. Dorsey
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23 ⁸ *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424.

⁹ ECF No. 29.